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No. 369

In the

Supreme Court of the United States

OCTOBER TERM, 1964

MUSA HAMADEH,

Petitioner,

vs.

IMMIGRATION AND NATURALIZATION SERVICE,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

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INDEX

	PAGE
Opinions of Court below	1
Jurisdiction	2
Questions Presented	2
Statutes Invoked	2, 3, 4
Statement of the Case	4, 5
Reasons for Granting Certiorari	5-11
Conclusions	11

List of Authorities.

Barber v. Gonzales, 347 U.S. 637,; 74 S.Ct. 822	10
Barese v. Ryan, 203 I. Supp. 880	10
Bridges v. Wixon, 326 U.S. 135, 154; 65 S.Ct. 1443, 1452	2, 4
Escobedo v. Ill., 378 U.S. 478	3, 5
Gubbels v. Hoy, 261 F(2d) 952	10
Maltz v. Nagle, 27 F(2) 835	9
Massiah v. U.S., 377 U.S. 201	5
Painter v. Texas (citation unavailable)	9
Quinones v. Kennedy, 374 U.S. 469	10
Sawkaw v. INS, 314 F(2) 34	10
U.S. v. Droga, 320 F(2d) 902	6
Wood v. Hoy, 266 F(2d) 825	10
Yiannapoulos v. Robinson, 247 F(2d) 655, 7th Cir., 1957	10

PAGE

STATUTES.

Immigration and Nationality Act of 1952, as amended
Section 212(a)(19) 2
Section 241(a)(2) 2, 3
Section 241(c) 3
Section 242(b)(4) 4
Section 244(e) 4

REGULATION.

8 CFR 242.53—Title 8—Aliens and Naturalization 2

BIA DECISIONS.

In re M, 7 Adm. Dec., 601 ..... 6, 8
In re F, Int. Dec. 1220, File A15 717 621 (June, 1962) 9 Adm. Dec., 684 8
In re S, 7 Adm. Dec., 715 6
In re U, 7 Adm. Dec., 460 and 463 6

TEXT BOOK.

Gordon & Rosenfield, "Immigration Law and Procedures," page 429 8
Illinois Code of Criminal Procedure 1963, Sect. 103-2 .. 5

IN THE

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OCTOBER TERM, 1964

No.

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IMMIGRATION AND NATURALIZATION SERVICE,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

The petitioner, Musa Hamadeh, prays that a writ of certiorari issue to review the judgments of the United States Court of Appeals for the Seventh Circuit, affirming the decision and order of the special inquiry officer and denying petition for review of the order deportation entered by the Immigration and Naturalization Service.

OPINIONS OF COURTS BELOW.

The decision of the Immigration and Naturalization Service ordering deportation is appended in the record (CCA Record, pp. 2-11).

The opinion of the Court of Appeals has been officially reported in 343 F 2 530, and is also appended in the Circuit Court of Appeals record.

JURISDICTION.

The judgment of the Circuit Court of Appeals sought to be reviewed, was dated and entered 3-24-65. See record of CCA.

Motion for a rehearing was filed 4-8-65 and was denied on 4-23-65.

Mandate of the Circuit Court of Appeals was stayed for 90 days (from 4-23-65) pending filing petition for a writ of certiorari.

Jurisdiction of this Court is invoked under 28 U.S.C. 1254 (1).

QUESTIONS PRESENTED.

1. Did the alien receive safeguards as outlined in *Escobedo* v. *Ill.* (378 U.S. 478).

2. Did a valid marriage exist under applicable laws.

3. Which party to the action had the burden of proof.

4. Did the special inquiry officer conduct a fair and impartial hearing and was his decision based upon reasonable substantial and probative evidence.

5. Should voluntary departure have been granted.

STATUTES INVOLVED.

Section 241 of the Immigration and Nationality Act, 8 U.S.C. §1251 provides in part as follows:

> (a) Any alien in the United States (including crewman) shall, upon the order of the Attorney General, be deported who . . . .
>
> • • •
>
> (2) entered the United States without inspection or at any time or place other than as designated by

the Attorney General or is in the United States in violation of this chapter or in violation of any other law of the United States; • • •

Section 212 of the Immigration and Nationality Act, 8 U.S.C. §1182 provides in part as follows:

(a) Except as otherwise provided in this chapter, the following classes of aliens shall be ineligible to receive visas and shall be excluded from admission into the United States:

• • •

(19) Any alien who seeks to procure, or has sought to procure, or has procured a visa or other documentation, or seeks to enter the United States, by fraud, or by willfully misrepresenting a material fact; • • •

Section 241 of the Immigration and Nationality Act, 8 U.S.C. §1251 provides in part as follows:

(c) An alien shall be deported as having procured a visa or other documentation by fraud within the meaning of paragraph (19) of section 1182(a) of this title, and to be in the United States in violation of this chapter within the meaning of subsection (a) (2) of this section, if (1) hereafter he or she obtains any entry into the United States with an immigrant visa or other documentation procured on the basis of a marriage entered into less than two years prior to such entry of the alien and which, within two years subsequent to any entry of the alien into the United States, shall be judicially annulled or terminated, unless such alien shall establish to the satisfaction of the Attorney General that such marriage was not contracted for the purpose of evading any provisions of the immigration laws; • • •

Section 242 of the Immigration and Nationality Act, 8 U.S.C. 1252, provides in part as follows:

(b)(4) no decision of deportability shall be valid unless it is based upon reasonable, substantial, and probative evidence:

"Section 244 (e). The Attorney General may in his *discretion*, permit any alien under deportation proceedings * * * to deport voluntarily from the United States at his own expense in lieu of deportation. . . ." (if such alien shall establish to the satisfaction of the Atty. Gen. that he is and has been, a person of good moral character for at least 5 years immediately preceding his application for voluntary departure under this section.

STATEMENT OF THE CASE.

A petition for review of a final order of deportation was filed in the Court of Appeals for the 7th Circuit on 7-21-64. The cause was heard on oral argument on 3-4-65. The decision, denying the petition for review was, dated 3-24-65. A petition for rehearing was filed 4-6-65 and denied on 4-23-65. The mandate of the CCA was stayed for 90 days from 4-23-65.

The petitioner is a 31-year old male, born in Jordan, who entered the United States as a student in 1955. While still a student at Roosevelt University and in valid immigration status (page 12, line 13) he married a United States citizen on June 20, 1957. His wife then filed a visa petition (Form I-130) on his behalf, which was approved on August 9, 1957. On November 8, 1957, petitioner re-entered the United States with a non-quota visa for permanent residence, issued to him by the United States Consul at Windsor, Ontario, Canada (Exhibit 3).

On June 20, 1958, petitioner's wife secured a divorce from him on the ground of cruelty alleging in her complaint that they were married, cohabited and lived together from June 20, 1957 to July 31, 1957 (Exhibits 5 and 6).

On July 21, 1962 plaintiff remarried. His second marriage was in Jordan to a Jordanian citizen.

On November 7, 1962, petitioner filed an application for citizenship, which is still pending.

An order to show cause was issued on November 29, 1962, requiring petitioner to show cause why he should not be deported (Exhibit 1). Hearings were held which resulted in a final order of deportation and denial of voluntary departure, on 1-28-64.

REASONS FOR GRANTING CERTIORARI.

The statement of alien [Ex. 4] taken by a government investigator on 8-16-61 in paragraph 1 sets forth "I am an officer of the U.S. Immigration and Naturalization Service and desire to question you under oath regarding your right to be and remain in The U.S. Any statement you make must be made voluntarily and of your own free will. Such statement may be used against you by the Government as evidence in any criminal or civil proceeding.

It is apparent that the Special Inquiry Officer gave great weight to the statement of Petitioner (Exhibit 4), as shown by his opinion (R. p. 25, 26, 27 & 28). If this statement were excluded a new aspect would be given to the case and a re-evaluation would be proper. Petitioner was not advised that he had the right to remain silent nor was he advised of his right to consult a lawyer.

Section 103-2 (Ill. Rev. Stat. 1963, ch. 38, § 103-2) states that "*on being taken into custody* every person shall have the right to remain silent."

Under the guidance of the cases: *Escobedo* v. *Ill.*, 378 U.S. 478 (1964) and *Massiah* v. *U.S.*, 377 U.S. 201 (1964),

the failure, on the part of the government to warn the Petitioner of his right to remain silent or obtain a lawyer should result in invalidating the pre-hearing statement of Petitioner. These cited cases should apply to the instant case.

The statement itself was improperly received for the further reason that it was not a verbatim report. Rec. P. 88 & 89

It is to be noted that the present form of statements used by the I. & N. Service now contain an additional new recital "You are advised you have a right to remain silent . . ." and "you also have a right to consult a lawyer of your own choice." This safeguard was absent in Exhibit 4 and in the instant case.

The Marriage was valid under traditional requirements of mutual consent in law of contract. See *U.S.* v. *Drogo*, 320 F(2d) 902.

The alien was willing to fulfill his marital agreement (page 10, line 8; page 12, line 13), and indeed a government witness, Stella Hall, testified that alien liked Geraldine quite a bit (page 57, line 15). If the wife refused to fulfill her marital agreement, the alien should not be penalized for that. See *In re M*, 7 Adm. Dec., 601. See also *In re U*, 7 Adm. Dec., 460 and 463, where in the fourth paragraph it says:

> "We believe it satisfactorily establishes that the respondent entered into the marriage in good faith; that he intended to fulfill his marital obligations; that his failure to carry out his intention was to a considerable part the result of forces over which he had no control."

See also *In the Matter of S*, 7 Adm. Dec., 715.

The wife obtained a divorce rather than an annulment, by alleging a marriage and cruel and inconsiderate treatment thereafter; this pre-supposes a valid marriage. See Int. Dec. 1220, *In the Matter of F*, File A15 717 621 (9 Adm. Dec. 684) (June 21, 1962) where the Board of Immigration Appeals said:

> "It appears that which was present here was originally a bona fide marriage followed by a change of mind on the part of a citizen wife. Where the failure of the marriage is not the fault of the beneficiary, he is not precluded. . . ."

Ex. 7 shows the wife as a beneficiary in an insurance policy, obtained by alien.

The alien in the instant case did not enter marriage for the purpose of evading the Immigration and Nationality Act since he was in valid student status at the time he was married (page 12, line 12) and the Government uniformly permits students to remain in the United States. In the instant case a citizen sister could have filed a petition (Form I-130) in alien's behalf, which upon approval, would have accorded a fourth preference status to him under the quota. Had his sister done this he would have been eligible for immediate entry since the Jordanian fourth preference was current and open until April, 1960. Therefore, alien was otherwise admissible and did not need to avail himself of a *proforma* marriage for the purpose of evading the Immigration Laws to remain in the United States.

The order to Show Cause Ex. I par. 7: alleges that alien "failed or refused to fulfill marital agreement." This allegation shifts the burden of proof back to the government. Therefore since the government had the burden of proof—the case was tried and decided erroneously.

See *Gordon & Rosenfield,* "Immigration Law and Procedure", 4.7d, page 429. See also *In re M,* 7 Adm. Dec. of I&N Act, 601.

There were no positive findings that the alien had not established to the satisfaction of the Attorney General that a bona fide marriage was constructed for the purpose of evading any provision of the Immigration Laws or Section 241(c)(2).

Sect. 242b4 of I&N Act 8 USC 1252 specifies no decision of deportability shall be valid unless based on reasonable, substantial and probative evidence.

The testimony of admitted perjurers is not reasonable, or substantial, or probative.

The government witness testified blandly of details of conversations which purportedly took place about 6-7 years ago.

During the hearings two of the Government's chief witnesses admitted testifyng falsely and their testimony should have been disregarded *in toto.* (page 39, line 19; page 40, line 5; page 41, lines 9-12; page 60, line 21; Exhibits 5 and 6).

In addition, one of the witnesses, a Stella Hall, had the effrontery to attempt to change some of her testimony which had been given at previous hearings before the special inquiry officer, for the reason she "believed that the proceedings were against her" (page 66, line 25). The doctrine of *falsus in uno falsus in omnes* should be invoked here.

After the witnesses testified the Government introduced their statements, over strenuous objections, which contained hearsay statements and were highly prejudicial.

This was erroneous and improper and inserted into the record hearsay and prejudicial statements (page 86, line 15; Exhibit 9). Also (Exhibits 10 and 11).

In one instance there were statements introduced *after* the witness was excused. This statement set forth discrepancies such as "he told us his sister had gotten married and was able to stay here" (page 3, Exhibit 11) and (page 4, Exhibit 11) he "never mentioned that his sister entered into a marriage of convenience so she could remain in the United States."

On Page 4 Ex. 11, in the statement she stated: "He married her because by marrying a citizen of the United States he could adjust his standing so that he could remain in the United States." This was gross error and highly prejudicial.

Testimony of the witness concerning conversations she had with other people outside the presence of the alien were erroneously admitted, although objected to (page 26, line 18 to page 27, line 21).

Alien could not cross examine witness *after* she left the stand regarding her statement. Therefore right of confrontation was denied see *Painter* v. *Texas.*

Upon the receipt of hearsay evidence, alien should have been given the right to cross-examine *Maltz* v. *Nagle,* 27 F(2) 835.

Testimony of wife against her husband was inadmissible on the ground of privilege.

At pg. 42 to 44 the special inquiry officer questioned a witness, taking over the examination, and commenced asking improper questions. Objections to this procedure were ignored. This conduct was improper and prejudicial to the alien's rights.

The Government trial attorney suggested answers to the witness (page 48, lines, 23-24-25).

In *Bridges* v. *Wixon,* (1945) 326 U.S. 135, 154, 65 S.Ct. 1443, 1452, it states:

> "We are dealing here with procedural requirements prescribed for the protection of the alien. Though deportation is not technically a criminal proceeding, it visits a great hardship on the individual and deprives him of the right to stay and live and work in this land of freedom. That deportation is a penalty —at times a most serious one—cannot be doubted. Meticulous care must be exercised lest the procedure by which he is deprived of that liberty not meet the essential standard of fairness."

Quinones v. *Kennedy,* 374 U.S. 469 "Deportation is a drastic sanction."

Errors during hearings in receipt of evidence; receipt of unimportant, irrelevant and hearsay evidence prevented a fair hearing from being held and resulted in an overall denial of justice. See *Yiannopoulos* v. *Robinson,* 247 F(2d) 655; 7th Cir., 1957.

Meticulous care must be exercised lest procedure by which alien is deported not meet essential standards of fairness. See *Barese* v. *Ryan,* 203 I. Supp. 880.

There should be a strict construction of the statute. Although not penal in character, deportation statutes as a practical matter may inflict banishment or exile and should therefore be strictly construed. See *Barber* v. *Gonzales,* 74 S.Ct., 822; 347 U.S., 637.

Doubt in interpretation of the section re deportation must be resolved in favor of alien. *Sawkaw* v. *INS,* 314 F(2) 34; *Wood* v. *Hoy,* 266 F(2d) 825; *Gubbles* v. *Hoy,* 261 F(2d) 952.

The Government waited more than four years before commencing deportation proceedings, only after alien had gone to Jordan and remarried in 1962 and later filed for citizenship on November 17, 1962. This is an unfair procedure, having lulled alien into a false sense of security and after alien had made other commitments. The Application for Naturalization is still pending in the Office of the Naturalization Service, no decision having been rendered to this date.

Voluntary departure should have been granted in lieu of deportation. Alien had lived in U.S. since Sept. 1955, had no other involvement with authorities, was steadily employed at the General Electric Co. for more than 7 years. Statutory eligibility for voluntary departure was established Sect. 244e of I & N Act. This denial was unnecessarily harsh and vindictive.

There was a fatal variance between the allegation in the last paragraph of the order to show cause and the applicable statute in that no recital was made of Sect. 241 C l. 9, 10 & 11 "unless such alien shall establish to the satisfaction of the Atty. General that such marriage was not contracted for the purpose of evading any provisions of the immigration laws."

CONCLUSION.

It is respectfully submitted that the hearings accorded to this petitioner were not fair or legal; that the acceptance of the improper evidence was highly prejudicial; that due process was not accorded to alien. That the doctrine of the *Escobedo* case should apply to the instant case. A deportation case is equivalent to a criminal case

and more serious in many respects. That the statement taken from alien was in flagrant disregard of his Constitutional rights and for other foregoing reasons the petition for Writ of Certiorari should be granted.

Respectfully submitted,

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APPENDIX TO PETITION FOR WRIT OF CERTIORARI.

OPINION.

IN THE
UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

SEPTEMBER TERM, 1964—JANUARY SESSION, 1965

No. 14728
MUSA HAMADEH,
Petitioner,
v.
IMMIGRATION AND NATURALIZATION SERVICE,
Respondent.

Petition for Review of an Order of the Immigration and Naturalization Service under Public Law 87-301.

MARCH 24, 1965

Before HASTINGS, *Chief Judge* and SCHNACKENBERG and SWYGERT, *Circuit Judges.*

HASTINGS, *Chief Judge.* This case is before us on the petition of Musa Hamadeh (petitioner) for review of an order of the Immigration and Naturalization Service (respondent) under Public Law 87-301, Title 8 U.S.C.A. § 1105a.

The order sought to be reviewed was entered by a Special Inquiry Officer on September 27, 1963 in which petitioner was ordered deported from the United States to Jordan and was denied voluntary departure.

From the certified record filed by respondent the following facts appear to be undisputed.

Petitioner is a 31-year old married male. He is an alien, a native and citizen of Jordan. He first entered the United States as a student in 1955 and enrolled in Roosevelt University, Chicago, Illinois. He married Geraldine Armstead, a United States citizen, in Chicago on June 20, 1957. Subsequently, he went to Canada. On November 8, 1957, he re-entered the United States at Detroit, Michigan as a nonquota immigrant upon presentation of an immigrant visa, issued to him on the basis of his marriage on June 20, 1957. His wife filed the petition for such visa on his behalf.

On June 28, 1958, petitioner's wife secured an uncontested divorce from him in Illinois.

Petitioner returned to Jordan, leaving the United States on June 3, 1962. He married a citizen of Jordan in Jordan on July 21, 1962. His second wife remained in Jordan. He returned to the United States about August 30, 1962.

On November 7, 1962, petitioner filed an application for citizenship, which is now pending.

On November 29, 1962, respondent served petitioner with an order to show cause why he should not be deported pursuant to Section 241(a)(2) of the Immigration and Nationality Act, 8 U.S.C.A. § 1251(a)(2) and Section 241(c) of the Act, 8 U.S.C.A. § 1251(c); for violation of Section 212(a)(19) of the Act, 8 U.S.C.A. § 1182(a)(19).

The show cause order alleged, *inter alia*, that petitioner was an alien; that the marriage on which petitioner was admitted as a nonquota immigrant was entered into less than two years prior to his entry; and that the marriage was judicially terminated within two years subsequent to his entry into the United States.

Section 241(c) of the Act provides in part as follows:

> "(c) An alien shall be deported as having procured a visa or other documentation by fraud within the meaning of paragraph (19) of section 1182(a) of this title, and to be in the United States in violation of this chapter within the meaning of subsection (a) (2) of this section, if (1) hereafter he or she obtains any entry into the United States with an immigrant visa or other documents procured on the basis of a marriage entered into less than two years prior to such entry of the alien and which, within two years subsequent to any entry of the alien into the United States, shall be judicially annulled or terminated, unless such alien shall establish to the satisfaction of the Attorney General that such marriage was not contracted for the purpose of evading any provisions of the immigration laws; * * *."

The uncontroverted facts and admissions found in the hearings before the Special Inquiry Officer established a *prima facie* case of deportability under Section 241(c) of the Act, *supra*. A heavy burden was thereupon cast upon petitioner to establish to the satisfaction of the Attorney General that such marriage was not contracted for the purpose of evading any provisions of the immigration laws. *Todaro* v. *Pederson*, N.D. Ohio, 205 F. Supp. 612, 614 (1961), aff'd 6 Cir., 305 F. 2d 377 (1962), cert. den. 371 U.S. 891.

There was a full hearing before the Special Inquiry Officer. Only petitioner testified in his behalf. Respondent produced petitioner's former wife, her lady friend who testified at her divorce trial, three witnesses who testified concerning the first acquaintance and subsequent marriage of petitioner and his former wife, an investigator for respondent and documentary evidence. The Inquiry Officer found adversely to petitioner, ordered him deported to Jordan and denied voluntary deportation.

Petitioner appealed this decision to the Board of Immigration Appeals. On the basis of an extended memoran-

dum opinion, the Board upheld the decision and dismissed the appeal.

We have read the entire transcript of the record in this proceeding below. We agree with respondent that petitioner failed to discharge his burden of proving that his marriage was not contracted for the purpose of evading the immigration laws.

Petitioner admits that he never lived or cohabited with his former wife after their marriage. He saw her only three or four times on the street during the period of their married life. He knew of her divorce proceeding and voluntarily paid her attorney's fees and expenses therein. There was some evidence that this arrangement was agreed to before the marriage. There was substantial testimony to support the conclusion that he entered into a marriage of convenience so that he could remain in the United States. We are convinced that his marriage was contracted for the purpose of evading the immigration laws.

Petitioner further contends that he was not given a fair and impartial hearing by the Special Inquiry Officer and that the decision of deportability was not based on reasonable, substantial and probative evidence. Our examination of the record leads us to the contrary view and we so hold.

Petitioner finally charges what appears to be a claim of laches or equitable estoppel because respondent waited more than four years to commence the deportation proceeding. He points to his pending citizenship application and his subsequent marriage in Jordan. This contention is without merit.

We held in *United States* v. *Sahli*, 7 Cir., 216 F. 2d 33, 39-40 (1954), cert. den. 348 U.S. 964, that in the absence of a statutory limitation on the time within which such a deportation proceeding must be brought, the mere failure of the Immigration Service to act at an earlier date could not be held to estop it from acting.

For the foregoing reasons, the decision and order of the Special Inquiry Officer are affirmed and the petition for review is denied.

ORDER AFFIRMED.
PETITION DENIED.

U. S. DEPARTMENT OF JUSTICE
BOARD OF IMMIGRATION APPEALS

Jan 24 1964

File: A-8872702—Chicago
In re: Musa Hamadeh
In Deportation Proceedings
Appeal

On Behalf of Respondent:
William Greenhouse, Esquire
33 South Clark Street
Chicago, Illinois 60603

Charges:

Order:
Secs. 241(a)(2) and 241(c), I&N Act (8 USC 1251 (a)(2) and 1251(c) (1958))—Procured documentation by fraud on basis of marriage which occurred less than two years before entry and which was judicially terminated within two years subsequent to entry.

Lodged: None

Application: Termination of proceedings or voluntary departure.

This is an appeal from the order of the special inquiry officer requiring respondent's deportation upon the ground stated above. Voluntary departure was denied. The appeal will be dismissed.

The issue is whether respondent has proven that the marriage to his United States citizen wife was not for the purpose of evading the immigration laws. The Serv-

ice charges the marriage was entered into for the purpose of obtaining a nonquota visa. Respondent contends that the marriage was a bona fide one.

Respondent, a 30-year-old twice married male, a native and citizen of Jordan, came to the United States as a student in 1955. On June 20, 1957, he married a United States citizen; a visa petition on his behalf was approved on August 9, 1957; and on November 8, 1957 he entered the United States with a nonquota visa for permanent residence issued to him by the American Consul at Windsor, Ontario. On June 28, 1958, respondent's wife secured a divorce from him. (In 1962 he married in Jordan.)

Proof by the Service that the respondent procured an immigrant visa on the basis of a marriage which occurred less than two years before his entry for permanent residence and proof that the marriage was judicially annulled less than two years before his entry for permanent resispondent the burden of establishing to the satisfaction of the Attorney General that his marriage had not been contracted for the purpose of evading any of the provisions of the immigration laws (*Matter of V-*, 7 I&N Dec. 460). The special inquiry officer concluded that the respondent had failed to bear his burden. Counsel takes issue with this. We find it unnecessary to set forth details of the evidence; the special inquiry officer has done this adequately, and unless counsel's evidentiary and procedural objections require reversal, we must find that the record supports the special inquiry officer's order of deportation. Counsel's contentions will be taken seriatim.

Counsel contends that a prehearing statement taken from the respondent on August 16, 1961 was improperly admitted into evidence at the deportation hearing since it was not a verbatim report. In this statement, the respondent claimed that he and his citizen wife had honeymooned in a hotel, that they had then moved into his sister's home where they were given a room with kitchen privileges and the run of the house, that his wife quit her job about a week after the marriage, that later she

worked part time, that he lived with his wife for a full year after the marriage and then broke up because his wife wanted to go out in the evenings to places he could not afford, that he came home one day and was told by his sister that his wife had taken her clothes and left without an explanation, and that about a week later his wife started divorce proceedings. Respondent swore to the statement, signed it on the last page and initialed each page. The Service officer who took the statement testified that it was a verbatim record except insofar as there may have been discussions off the record (pp. 85-86, 89-90). At the deportation hearing, the respondent denied that he had made the answer in the statement to the effect that he and his wife lived together in his sister's house; he explained that what he had meant was that if his wife had consented to live with him, they would have lived in his sister's house. The same explanation was given as to the testimony concerning honeymoon in the hotel. As to the other answers, in the statement, concerning the termination of employment by his wife and the reason why he did not get along with his wife, and why she had left him, he explained that he may have said these things, but appearently his answers were the result of a misunderstanding of the Service investigator (pp. 92-93).

We believe the statement was properly admitted into evidence and that, despite respondent's explanation, it reflects the answers given by the respondent to the Service investigator. The details given and the consistent effort to create the impression that respondent and his wife were living together make it highly unlikely that the answers were the result of a misunderstanding. The fact that there could have been some off the record discussion before some of the questions is a factor which must be considered in evaluating the statement but does not prevent the admission of the statement into evidence.

Counsel objects to the fact that the Service requested and obtained a continuance of the hearing to produce witnesses (pp. 61-62). Continuances are within the discretion of the special inquiry officer. We find no abuse of discretion. The first continuance in the case was granted to the respondent after the Service had presented

its prima facie case and was to enable the respondent to rebut the Service case (pp. 7-8). At the conclusion of respondent's case at the second hearing, the Service moved for continuance to meet the evidence (pp. 22-3). Why the Service did not have present witnesses upon which its case depends, is not shown in the record. We agree with counsel that the Service should have been prepared to proceed with its case; however, we do not believe prejudicial error was committed. The second Service request for an adjournment (p. 62) was based upon the fact that a Service investigator who had taken the prehearing statement from the respondent which the respondent repudiated in part was not available to testify because he had been unexpectedly called out of the city. We find no reason to criticize continuance for the purpose in view of the importance of the prehearing statement.

Government witnesses; Geraldine Armstead (respondent's wife) and Stella Hall, her friend, admitted at the deportation hearing that they had testified untruthfully in court at the hearing on Geraldine's petition for divorce. Counsel contends their testimony in the deportation proceedings should therefore have been disregarded. It is for the special inquiry officer to determine what credibility a witness should be given. The special inquiry officer took into consideration the fact that the witnesses had testified falsely in the divorce proceedings, but he found they had testified credibly before him. His finding is justified by the corroboration the testimony of these witnesses receives from the record which shows that respondent admitted that he had not lived with his wife (although he first attempted to convey the contrary impression), and that Wiggins whose credibility is not attacked testified that respondent told him he wanted to marry a girl but not live with her and that he would divorce her after a year or so.

Counsel objects to the fact that Government witness Geraldine Armstead was permitted to testify over his objection to the substance of a conversation she had with Mr. & Mrs. Wiggins and Stella Hall, persons who had introduced her to the respondent (p. 26). The only answer the witness gave in response to the question on the

issue was that the conversation "was in relation to marrying Musa [respondent]" (p. 27). We see no error in the admission of this testimony. It is not hearsay insofar as the witness was giving the substance of what she had said (*Sellers* v. *White*, 121 S.E. 2d 385 (1961)). Insofar as it is hearsay, we must point out that hearsay is admissible in these proceedings, that this hearsay is not the basis for the finding that the marriage was one of convenience; that two of the other persons to the conversations were presented by the Government as witnesses, and that their testimony is consistent with that of Geraldine Armstead's.

Counsel contends that the trial attorney put words into the witnesses' mouths. The specific reference is to the fact that Government witness Hall's ability to state the date of respondent's marriage at the deportation hearing was based on the fact that the trial attorney had previously used the date (p. 48, lines 20-25). The witness testified at the outset as to her inability to recall dates; the testimony of this witness is not used to establish the date of the marriage; the material aspect of her testimony concerns her knowledge as to whether the marriage was a bona fide one or one of convenience only. As to this material issue, she testified concerning respondent's concern with the fact that his immigration status was a threat to his desire to stay in the United States to finish his education, to the fact that respondent sought a wife, and to the fact that respondent and his wife had not lived together after the marriage (p. 55). This information was given without leading questions having been asked. Although other specific instances are not pointed out by counsel, we have carefully examined the testimony of each witness in light of the general criticism made; however, we find no error.

Counsel contends that the introduction of prehearing statements made by Service witnesses after they had testified and been dismissed was irregular and prejudicial.

A statement made by Mrs. Hall was introduced while she was present at the hearing (pp. 67-68). The witness testified the statement refreshed her recollection and counsel examined her on the basis of the statement (pp. 71-72).

The statement of Government witness Wiggins was introduced when he was present (pp. 76-77). It was only the statement of Geraldine Armstead (pp. 86-88) which was introduced after the witness had been dismissed (pp. 86-87). The special inquiry officer did not rely upon Geraldine's sworn statement other than to comment upon the fact that it had been introduced and that it agreed substantially with her testimony at the hearing (p. 6, special inquiry officer's opinion).

Respondent's deportability is established without reference to the sworn statements of the Government witnesses. His admission at the hearing that he had not lived with his wife at all, and his previous attempt to create the opposite impression under oath, an attempt which included the submission of an affidavit by his sister to substantiate his fabricated story, marks him of poor credibility. His actions indicate that he was attempting to hide a situation which if known to the authorities would have resulted adversely to him, and thus supports the testimony of the Government witnesses that he married to gain permanent residence in the United States only.

Counsel's contention that the record establishes that respondent was willing to fulfill his marital agreement is not borne out by a review of the record as a whole. *Matter of M-*, 7 I&N Dec. 601 cited by counsel in support of his view is not applicable. M entered into his marriage with the intention of living with his wife; respondent did not. We believe this record establishes respondent has failed to carry his burden that the marriage was not contracted for the purpose of evading the provisions of the immigration laws.

The fact that the alien was in a student status at the time of his marrige does not appear to be a material factor. It was apparently the alien's fear that he would not be permitted to continue in this status for a sufficient time to obtain the education he desired. There was, therefore, even in this respect strong motivation for desiring to become a permanent resident. *Matter of V-*, 7 I&N

Dec. 460 as *Matter of T-*, 7 I&N Dec. 417 cited generally by counsel on this issue both relate to visas obtained by fraudulent marriage but, as far as we can see, do not benefit to the respondent. *Matter of S-*, 7 I&N Dec. 715 also cited generally on this issue concerned the application of a law which provided for termination of deportation proceedings against certain aliens. This law (or its successor) is not involved in the instant case.

The fact that respondent's sister could have filed a petition in his behalf which would have given him a fourth preference status under the quota in 1958 and 1959 when according to counsel the fourth preference quota was current, is a factor but not a controlling one.

The fact that a divorce was obtained instead of an annulment is not material. The Service does not allege that a marriage did not occur or that it was not a valid marriage under the laws of the State. Irrespective of the validity of the marriage under the law of the State, the fact remains that this record establishes that it was entered into for the purpose of evading the immigration laws; this being so, and the other elements of the charge being present, respondent is deportable. (See, *United States* v. *Lutwak*, 344 U.S. 604, 611 (1952)).

Counsel contends that the special inquiry officer did not make a positive finding that the alien had failed to establish to the satisfaction of the Attorney General that the marriage had not been contracted for the purpose of evading the provisions of the immigration laws. While the special inquiry officer did not use the exact terms of the law, he made an adequate finding on this issue (p. 12, special inquiry officer's opinion, last sentence of first full paragraph). The special inquiry officer is not required to make a finding concerning the failure to fulfill a marital agreement. It is enough that respondent has been found deportable under one provision of law.

Counsel contends that the Government's failure to commence deportation proceedings before the alien had filed for citizenship on November 17, 1962 is "tantamount to laches". When the Service first determined it had a case

against the respondent is not shown by the record. The question and answer statement taken from respondent is dated August 16, 1961. There does not seem to have been too great a lapse of time between the commencement of the investigation and the institution of deportation proceedings on November 29, 1962. In any event, the defense is not available in these proceedings (*U. S. ex rel. Circella* v. *Sahli,* 216 F. 2d 33, 7th Cir. (1954), certiorari denied 348 U.S. 964 (1954)).

Counsel's contention concerning the wife's motive, if we understand him properly, is that if her story is believed, this record fails to establish that she had a satisfactory reason for entering into the marriage. Respondent's wife testified she entered into the marriage to help the respondent. This is not a usual reason for entering into marriage, but that this was the reason for the marriage to respondent appears to be supported by the fact that the parties never lived together, and that others acquainted with the parties knew that the marriage was not a bona fide one.

Respondent is charged with having entered into a marriage for the purpose of evading the immigration laws of the United States; he has failed to establish on this record that the marriage was not contracted for this purpose. The charge is sustained by evidence that is reasonable, substantial and probative.

Respondent's request for voluntary departure was denied by the special inquiry officer on the ground that he had testified falsely under oath concerning his marital relationship and was, therefore, precluded from obtaining the relief under the provisions of Section 101(f)(6) of the Immigration and Nationality Act, and that even if respondent were not so precluded, his conduct in attempting to evade the immigration laws and his efforts to get others to lie for him would make the grant of discretionary relief inappropriate. Counsel contends the denial is an unnecessarily harsh action. We believe the record amply supports the special inquiry officer in this matter and that the denial of voluntary departure is proper.

In his notice of appeal, counsel contended that respondent's adjustment of status had not been properly rescinded. Respondent's grant of a visa is not an adjustment of status. This deportation proceeding is the proper action for cancelling the status obtained by respondent's fraud.

UNITED STATES DEPARTMENT OF JUSTICE
Immigration and Naturalization Service

File: A8 872 702 — Chicago September 27, 1963

In the Matter of
MUSA HAMADEH
Respondent

IN
DEPORTATION
PROCEEDINGS

CHARGE:

I & N Act — Sections 241(a)(2) and 241(c) (8 USC 1251(a)(2) and 1251(c))— Procured documentation by fraud on basis of marriage entered into less than two years before entry, which marriage was judicially terminated within two years subsequent to such entry.

APPLICATION: Termination of proceedings or voluntary departure

IN BEHALF
OF RESPONDENT:
William Greenhouse, Attorney
33 South Clark Street
Chicago, Illinois

IN BEHALF
OF SERVICE:
Melvyn E. Stein
Trial Attorney
Chicago, Illinois

DECISION OF THE SPECIAL INQUIRY OFFICER

The respondent is a 30 year old married male. As alleged in the order to show cause, the respondent admitted that he is an alien, a native and citizen of Jordan, who entered the United States at Detroit, Michigan, on November 8, 1957, at which time he was admitted as a nonquota immigrant upon the presentation of an immigrant visa issued to him on the basis of his marriage to Geraldine Armstead on June 20, 1957, at Chicago, Illinois. The respondent did not admit the other allegations in the order to show cause, namely, that his marriage to Geraldine Armstead was terminated by divorce on June 28, 1958; that he was unable to establish that his marriage was not contracted for the purpose of evading the immigration laws and that he failed and refused to fulfill his marital agreement with Geraldine Armstead.

The respondent identified Exhibit 3 as the nonquota immigrant visa issued to him at the American Consulate at Windsor, Ontario, Canada, on November 8, 1957, as the spouse of a United States citizen upon the basis of an approved visa petition filed by his wife in his behalf. Exhibit 6 is the certified copy of a decree of divorce entered on June 28, 1958, in the City Court of Blue Island, Illinois, in the case of Geraldine Hamadeh v. Musa Hamadeh, No. 58 BI-220, which shows that their marriage, entered into in Chicago on June 20, 1957, was dissolved by a decree of divorce entered by that court on June 28, 1958, on the ground that the defendant had been guilty of extreme and repeated cruelty toward the plaintiff. The respondent identified this decree of divorce as relating to him.

Inasmuch as the foregoing establishes that the respondent entered the United States on November 8, 1957, with a nonquota immigrant visa procured on the basis of his marriage to Geraldine Armstead, a United States citizen, on June 20, 1957, which was less than two years prior to such entry, and such marriage was judicially terminated by divorce on June 28, 1958, which was less than two years after such entry, it is concluded that the Government has established prima facie that the respondent is subject to deportation

under the provisions of Section 241(c) of the Immigration and Nationality Act in that he obtained his visa by fraud under the provisions of Section 212(a)(19) of the Act. The burden then is upon the respondent to establish to the satisfaction of the Attorney General that such marriage was not contracted for the purpose of evading any provisions of the immigration laws (*Matter of V.*, 7 I & N Dec. 460).

The respondent testified that he married Geraldine Armstead at Chicago, Illinois, on June 20, 1957, in good faith intending to live with her as husband and wife. He admitted that he never lived with her. However, he stated that he asked her to live with him but she refused. He also testified that his wife obtained the divorce from him on June 28, 1958, against his wishes. The respondent further testified that he is married at the present time; that he was married in Jordan on July 21, 1962; that his present wife lives in Jordan; that she is from his home town; and that he has known her all of his life.

Exhibit 4 is a record of sworn statement made before Investigator Bruce A. Ferguson at Chicago, Illinois, on August 16, 1961, which the respondent identified as bearing his signature on page 7 thereof. The respondent testified that he did not stand and did not raise his right hand to be sworn as indicated in Exhibit 4 but instead remained seated. His attention was called to the last question on page 3 of Exhibit 4 which reads: "How long did you continue to live with Geraldine Armstead after your marriage," and the answer: "For a full year." When the respondent was asked if that answer was true, he stated that what he meant was that they were not divorced until after a full year following their marriage but not that they were living together. His attention was next called to the third question from the bottom of page 3 in Exhibit 4 which reads: "Where did you and Miss Armstead live immediately after your marriage," and the answer: "7620 South Sangamon. I had been living at 6731 South Parnell and continued to live there after I was married for about one week with Geraldine, then we moved to Sangamon." When the respondent was asked whether that answer was true he replied: "When he asked me this question, I must have been embarrassed."

Counsel for the respondent objected that the statement (Exhibit 4) was not a verbatim record of the questions and answers in that the investigator asked the question and then turned to the stenographer and dictated the answer and as such there was a lag and a chance that the respondent's exact answer was not recorded. Thereupon, when the respondent was asked if he told the truth in Exhibit 4, he replied: "Well, the way I understood him, sir, it was all complicated. Just asked me a question, turned to his secretary and just told her the way he wanted to say. In other words, it was not my answer to that. * * * "

The respondent was asked to go over his statement (Exhibit 4) and point out which of the answers shown were not the answers he made. Among those he referred to were the question and answer quoted in the preceding paragraph as to where he and Miss Armstead lived immediately after their marriage. He testified: "I did not tell him we moved to Sangamon. I told him I moved to Sangamon. I said I asked her to move from 6731 Parnell to Sangamon—both of us—and then I moved to Sangamon." He also referred to the question: "Did you and your wife occupy an apartment at your sister's home," and the answer: "No, we had our own room and were permitted to use the kitchen and the rest of the house." The respondent stated that was not his answer. He testified that he said: " * * * if she would live with me, we would occupy this room and she refused to live with me. I said if she will accept to live with me, we will use the kitchen." He was asked about the other questions and answers in Exhibit 4 and he replied: "I maybe said these things. I misunderstood the whole story from Mr. Ferguson."

Investigator Ferguson testified that the statement marked Exhibit 4 bears his signature on page 7; that it was taken under oath; that he administered the oath himself; and that he has never taken a statement where he did not administer the oath. He further testified that Exhibit 4 reflects the questions asked and the answers given in substance. He explained "in substance" to mean that occasionally a respondent will misinterpret a question and get off

the track and in order to bring him back to the question there would be some conversation off the record which was not reflected in the sworn statement. He stated that the answers shown on Exhibit 4 are those of the deponent and not those of the investigator. On cross-examination Mr. Ferguson stated he could not recall whether there were any off the record discussions when the statement marked Exhibit 4 was taken but that there generally is some off the record discussion. He stated that generally if the typist or stenographer understands the answer, she types it; if not, he gives her the answer in the language of the respondent. He testified that as near as he can recall, Exhibit 4 is a verbatim record of the questions and answers.

The Government presented Mrs. Geraldine Vincent, the respondent's ex-wife, as a witness. She stated that she was born in Chicago, Illinois; that her maiden name was Armstead and that she was married two times. Her first marriage was to Otto Vincent and her second marriage was to the respondent. She testified that she met the respondent through her friends, Mrs. Stella Hall and Mr. and Mrs. Samuel Wiggins. She stated that when she met the respondent he told her he wanted to get married so he could finish his schooling in the United States and that she agreed to marry him. She also testified that on that occasion the respondent agreed that he would pay for the expense of a divorce to terminate their marriage. Mrs. Vincent stated that about one year after their marriage the respondent telephoned her and inquired about a divorce and she told him she was ready. He then furnished the funds for the divorce and she proceeded to obtain it. Exhibit 11 is a sworn statement made by Mrs. Vincent before an officer of this Service on March 21, 1962, which substantially agrees with her testimony at the hearing.

Mrs. Vincent also testified at the hearing that in about March or April of 1962, pursuant to the respondent's telephone request, she accompanied him to his sister's house so that if she were ever questioned as to whether she had lived in his sister's house she could describe his sister and her house. She stated that on that occasion the respondent told

her that the immigration authorities might start checking on him as he was applying for United States citizenship. Mrs. Vincent further testified that a few weeks prior to the hearing the respondent telephoned her to discuss the testimony she would give at the hearing; that he told her they would ask whether she had lived with him and she informed him that the immigration officers had already found out that she had not lived with him; that she had made a sworn statement to that effect and that she could not contradict her statement. She said the respondent then suggested she could say he had asked her to live with him but she figured he could not afford it. Mrs. Vincent further testified that the respondent never asked her to live with him.

Upon cross-examination by counsel, Mrs. Vincent admitted that the facts alleged in her complaint for divorce (Exhibit 5) were not true and that her allegations in the complaint that the respondent struck her on July 15, 1957, and July 31, 1957, were false. She stated that was the only way she could get a divorce. She also admitted that she testified falsely under oath in court in her divorce case.

The Government presented Samuel Proctor Wiggins as a witness. He identified Exhibit 10 as the affidavit which he made before an officer of this Service and stated that all of his statements therein were true. The witness testified that he is a registered pharmacist and that he met the respondent when he came to the store where the witness was employed. He said the respondent was then a student and the respondent told him he wanted to meet a nice girl and get married. The witness stated that the respondent said that they would marry but would not live together and then would get a divorce about a year later. The witness testified that he did not know any girls but he introduced the respondent to his sister-in-law, Stella Hall, who belonged to many clubs and knew many girls. In his affidavit (Exhibit 10) the witness stated that after the respondent married Geraldine Vincent he was residing alone near the store where the witness worked and that the respondent told him that the agreement was that he and Geraldine would

not live together and when he got enough money they would be divorced.

Stella Hall was presented as a witness and she identified Exhibit 9 as the record of a sworn statement which she made on October 16, 1962, before Investigator Thomas Allen. In this statement Mrs. Hall said that she met the respondent through her brother-in-law, Procter Wiggins, about five or six years ago and that she introduced him to Geraldine Vincent. The respondent was a student and he told her he was having trouble remaining in this country so he could finish his education. He told her that his sister had married in this country and had then been able to remain in the United States and that he felt that if he could marry a girl from the United States, he could stay here and complete his schooling. She said she introduced him to several girls, including Geraldine Vincent; that she and the respondent and Geraldine talked about the two of them getting married. The agreement was that it was to be merely a marriage of convenience and that he was to pay for the divorce. She stated that the respondent and Geraldine did not live together after their marriage and that they were divorced.

In her testimony at the hearing Mrs. Hall had difficulty remembering dates and the exact conversation between the respondent and Mrs. Vincent when she introduced them. However, her testimony substantially corroborated the testimony of Mrs. Vincent and Samuel Wiggins. Mrs. Hall further testified that the respondent telephoned her about three weeks prior to the hearing in his immigration case. She said he told her that she would probably be called as a witness at that hearing and he asked her to arrange a meeting where he could talk to her and Geraldine so that "we could get together on this hearing." The witness stated that she informed him she had been to the immigration office in November 1962 and had told the truth, which was what she was going to do at the hearing, and that she saw no need for the meeting.

Upon cross-examination the witness testified that she had been a witness for Geraldine Vincent in her divorce suit.

She reluctantly admitted that she had testified at the divorce trial that the respondent beat his wife on July 15, 1957, and July 31, 1957; that she did not know this to be true and that it was possible such testimony was false.

Exhibit 8 is an affidavit which is purported to be made by Shamsa Zayed on March 6, 1962, before Investigator Bruce A. Ferguson of this Service. In Exhibit 8 the affiant stated that she is the sister of Musa Ahmed Hamadeh; that he married a girl named Jerry and that he and Jerry lived in her house at 7620 South Sangamon Street, Chicago, Illinois, for about six months.

At the hearing the respondent admitted that he never lived with Geraldine Armstead (Vincent) following their marriage on June 20, 1957. However, he claimed that he married her in good faith but that she declined to live with him. Upon consideration of all the evidence of record, in my opinion, his claim that he entered into the marriage in good faith is not credible.

In Exhibit 4, which is a record of sworn statement dated August 16, 1961, which the respondent identified as bearing his signature, he claimed that he had lived with Geraldine Vincent for a full year following their marriage and he furnished addresses at which they allegedly lived together, including his sister's house, where he claimed they had their own room and were permitted to use the kitchen and the rest of the house. At the hearing he attempted to repudiate his statements in Exhibit 4 by claiming that he had not understood the interpreter and that his answers were not correctly recorded. The explanations he offered for some of his answers in Exhibit 4 were fantastic and incredible. On the other hand, Investigator Ferguson, who took the statement (Exhibit 4) from the respondent, testified that it was substantially a verbatim record of the questions asked the respondent and of his replies. The testimony of Mr. Ferguson was straightforward and convincing. It is concluded that Exhibit 4 is an accurate record of the sworn statement made by the respondent on August 16, 1961.

Furthermore, despite the fact that two of the Government's witnesses, the respondent's ex-wife, Mrs. Vincent, and Stella Hall, admittedly gave false testimony under oath in Mrs. Vincent's divorce suit, it is believed that their testimony in the present proceeding that the respondent's marriage to Mrs. Vincent was one of convenience is credible. Their testimony on this point is also corroborated by the sworn testimony of the other Government witness, Samuel P. Wiggins.

It is noted in Exhibit 8, an affidavit made by the respondent's sister before an immigration officer on March 6, 1962, she stated that the respondent was married to a girl named Jerry and that he and Jerry lived in her house for about six months. As the respondent admitted at the hearing that he never lived with Geraldine Vincent, it is obvious that his sister's affidavit is false and that it was made in an effort to support her brother's claim that he had lived with Mrs. Vincent as husband and wife following their marriage.

The respondent also presented a certificate of insurance indicating that he had named Mrs. Vincent as the beneficiary of his group life insurance policy effective October 28, 1957 (Exhibit 7). Mrs. Vincent testified that she knew nothing about this policy. It seems strange that this designation was made effective October 28, 1957, since the respondent admits that they never lived together. However, it is noted that the designation of beneficiary became effective a short time before the respondent applied at the office of the United States Consul at Windsor, Ontario, Canada, on November 8, 1957, to obtain his immigrant visa. Apparently this designation of beneficiary was for the purpose of lending support to the respondent's claim of a valid marriage.

In addition to the respondent making false statements as to the bona fides of his marriage to Mrs. Vincent, the record discloses that he attempted to have Mrs. Vincent give false testimony for the same purpose. Upon the basis of the entire record, it is concluded that the re-

spondent has not sustained the burden of satisfactorily establishing that his marriage to Geraldine Vincent was not entered into for the purpose of evading any of the provisions of the immigration laws.

The respondent applied in the alternative for the privilege of voluntary departure. He testified that he has never been arrested and that he has never belonged to the Communist Party. He also stated that he has the sum of $484.00 in cash. However, inasmuch as the evidence of record establishes that he gave false testimony under oath concerning his marital relationship with Geraldine Vincent, it is concluded that he comes within the provisions of Section 101(f)(6) of the Immigration and Nationality Act and he is, therefore, precluded from qualifying for the privilege of voluntary departure. However, even apart therefrom, it is not believed that the respondent's conduct in attempting to evade the immigration laws and his efforts to get others to lie for him deserves to be rewarded with the grant of discretionary relief from deportation. His application for the privilege of voluntary departure will, therefore, be denied as a matter of discretion. The respondent specified Jordan as the country to which his deportation should be directed if it is required by law.

Order: It Is Ordered that the respondent be deported from the United States to Jordan on the charge contained in the order to show cause.

/s/ E. A. Berman,
E. A. Berman
Special Inquiry Officer.

In the Supreme Court of the United States

OCTOBER TERM, 1965

No. 369

MUSA HAMADEH, PETITIONER

v.

IMMIGRATION AND NATURALIZATION SERVICE

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINION BELOW

The opinion of the court of appeals (Pet. App. 1a–5a) is reported at 343 F. 2d 530.

JURISDICTION

The judgment of the court of appeals was entered on March 24, 1965. A petition for rehearing was denied on April 23, 1965. The petition for a writ of certiorari was filed on July 19, 1965. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTIONS PRESENTED

1. Whether the Special Inquiry Officer conducted a fair and impartial hearing, and based his decision on reasonable, substantial, and probative evidence.

2. Whether the admission of a statement made by petitioner to an officer of the Immigration and Naturalization Service violated the principles of this Court's decision in *Escobedo* v. *Illinois*, 378 U.S. 478.

STATEMENT

After an adverse decision of the Board of Immigration Appeals (Pet. App. 5a–13a), petitioner sought review in the Court of Appeals for the Seventh Circuit of an order of deportation to Jordan and denial of voluntary departure (Pet. App. 14a–22a). The court of appeals affirmed the order (343 F. 2d at 533).

The evidence taken at the hearing before the Special Inquiry Officer may be summarized as follows:

Petitioner, a native and citizen of Jordan, first came to the United States as a student in 1955 (R. 40–41).[1] In 1957, while he was still a student at Roosevelt University in Chicago, petitioner asked a friend, Samuel Wiggins, to help him meet an American girl whom he could marry for the purpose of remaining in this country (R. 117). Petitioner told Wiggins that he would not live with his wife after the marriage and would get a divorce about a year later (R. 117–118). Petitioner also made the same request of Wiggins' sister-in-law, Stella Hall (R. 91–92). She introduced petitioner to a Mrs. Geraldine Vincent, nee Armstead, a divorcee seven years older than petitioner, the mother of an eleven year old daughter, and an Amer-

[1] Reference is to that volume of the Certified Administrative Record, filed with this Court, which contains the pertinent Immigration and Naturalization Service orders and the transcript of petitioner's hearing before the Special Inquiry Officer.

ican citizen (R. 63, 66, 76, 84). From the outset, Mrs. Vincent understood that the purpose of the proposed marriage was solely to allow petitioner to stay in this country (R. 67–68, 81), although petitioner testified to the contrary at the hearing, asserting that he had intended to live with Mrs. Vincent after the marriage and establish a home (R. 47–54). At the same time the marriage was proposed, petitioner discussed the divorce to be obtained a year later, and agreed to pay for it (R. 69, 81–82). On June 20, 1957, petitioner married Mrs. Vincent (R. 49, 63), but they never lived together and rarely saw each other (R. 69, 80, 94), as petitioner acknowledged when he was cross-examined about a statement that he had given to an immigration officer on August 16, 1961, in which he falsely asserted that he had lived with Mrs. Vincent for a full year (R. 50–51; Ex. 4). After the marriage, petitioner went to Canada, then re-entered the United States on November 8, 1957, under a nonquota visa for permanent residence, issued to him on the basis of his marriage in response to a petition filed in his behalf by Mrs. Vincent as his American wife (R. 54; Ex. 3). Prior to his re-entry into the United States, petitioner had named Mrs. Vincent as the beneficiary of his group life insurance policy effective October 28, 1957, although Mrs. Vincent knew nothing about the policy (Ex. 7). Except for the visa petition that she filed in petitioner's behalf, Mrs. Vincent did not use petitioner's name as her own until institution of divorce proceedings (R. 80).

In the spring of 1958 petitioner called Mrs. Vincent and asked her to institute suit for divorce, which she did (R. 70; Ex. 5). Although petitioner testified that Mrs. Vincent sought the divorce independently, for reasons unknown to him, he admitted that he paid for the suit and did not contest it (R. 47, 54). Mrs. Vincent and Stella Hall gave false testimony in an Illinois court in support of the false allegations in the divorce complaint (R. 77–79, 96, 98; Ex. 5),[2] and a divorce was granted on June 28, 1958 (R. 42–43, Ex. 6). Petitioner went back to Jordan, departing from the United States on June 3, 1962, and there married a citizen of Jordan on July 21, 1962. Petitioner's second wife remained in Jordan when he returned to the United States on August 30, 1962 (R. 58–59).

ARGUMENT

1. The hearing conducted by the Special Inquiry Officer was fair and impartial, and his decision was based on reasonable, substantial, and probative evidence. Petitioner was given reasonable notice of the hearing (Ex. 1), he was represented by counsel throughout the hearing (R. 37, 46, 62, 102–103), he was given an adequate opportunity to testify and present other evidence in his own behalf (R. 47–59; Ex. 7), and he was allowed to cross-examine the government's witnesses. The strict common law rules

[2] Both women testified that petitioner had communicated with them in an attempt to shape the testimony they would give at the hearing before the Special Inquiry Officer (R. 72–74, 94–95), and Mrs. Vincent testified that he had asked her to testify falsely (R. 72–74).

of evidence do not apply in administrative hearings, and the admission even of incompetent and irrelevant matter is not reversible error where, as here, there is substantial evidence to sustain the decision of the agency. *Yiannopoulos* v. *Robinson,* 247 F. 2d 655 (C.A. 7); *Navarrette-Navarrette* v. *Landon,* 223 F. 2d 234 (C.A. 9), certiorari denied, 351 U.S. 911. The government went far beyond merely establishing a *prima facie* case, and presented substantial evidence to show that petitioner's marriage to Mrs. Vincent was merely a front, conceived and entered into for the sole purpose of evading the immigration laws (see Statement, *supra*). Petitioner offered only his own improbable denials and his group insurance policy under which Mrs. Vincent was a beneficiary. Under the circumstances, the hearing officer's findings were fully warranted. And, in view of petitioner's attempts to evade the immigration laws and induce false testimony by others, it was well within the hearing officer's discretion to deny petitioner the privilege of voluntary departure in lieu of deportation.

2. In his petition for a writ of certiorari, petitioner for the first time argues that this Court's holding in *Escobedo* v. *Illinois,* 378 U.S. 478, regarding right to counsel in police interrogations, is applicable in the instant case with respect to petitioner's statement (Ex. 4) taken by an officer of the Immigration and Naturalization Service (Pet. 2, 5–6). However, no objection to the statement was made on that basis at the hearing. Petitioner contended only that the statement had not been made voluntarily and that it was

not a verbatim copy of the responses he had made to the immigration officer's questions (R. 41).[2] In all events, *Escobedo* is inapplicable to the facts of this case. This is not a criminal case. The statement, taken more than a year before deportation proceedings were instituted, was in the investigatory, not the accusatory, stage of the proceeding (see 378 U.S. at 492); there was no purpose to elicit a confession. The statement was exculpatory and formed no part of the government's case on the merits; it was used only to impeach petitioner's credibility. Petitioner was not in custody when he made the statement and had not requested and been denied an opportunity to consult with counsel (see 378 U.S. at 490–491). And exclusion of the statement would not have affected the outcome of the case in view of the substantial evidence against petitioner.

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[2] The statement itself shows, and the immigration officer who took it testified, that petitioner was told of his right to remain silent and that any statement he made could be used against him in any criminal or civil proceeding (R. 122–128; Ex. 4). Petitioner's own testimony completely failed to establish that the statement was made involuntarily (R. 41–42), and in the petition for certiorari, his claim that the statement should have been excluded on that ground has been abandoned. His claim that the statement was not an accurate record of his answers is refuted by the testimony of the officer who questioned him (R. 124, 128).

CONCLUSION

For the reasons stated, it is respectfully submitted that the petition for a writ of certiorari should be denied.

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AUGUST 1965.

END